IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7523 OF 2004

Padmanabh Sadashiv Gokhale ...Petitioner

vs.

The State of Maharashtra & others. ...Respondents

Mr.Girish Kulkarni, for Petitioner

Mr.J.S.Pawar, Addl.G.P. for State.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 20th September,2004.

P.C.:-

1. Rule.

2. Learned Addl.Govt. Pleader waives the service. By consent, writ petition is taken up for hearing.

3. This petition is directed against the Judgement and order dated 8th July,2004 passed by the Maharashtra Administrative Tribunal, in O.A. no.405 of 2003. The O.A. before the tribunal was filed by the Petitioner challenging the order dated 5th November,1992 whereby the Petitioner came to be reduced in

rank to the post of Sub Inspector of Police from the Post

of Inspector of Police i.e. two steps down from the post which he was holding, without any inquiry and without following due process of law. The tribunal also recorded in its order that the impugned order of reversion was issued without giving any opportunity to the Petitioner. However, the O.A. was dismissed by the Tribunal solely on the ground that it was barred by law of limitation.

4. Briefly the facts are that the Petitioner joined the services as a Police Sub Inspector in the year 1974 and after 16 years of services, he was promoted to the post of Inspector of Police with effect from 30th July,1990. In January,1992, the Petitioner was working as Inspector of Police in Traffic Branch of Mumbai Police. One Rukhsana Aslam lodged a criminal complaint against some police officers under Section 384, 452 read with Section 114 of Indian Penal Code. The Petitioner was implicated as Accused no.5 in the said case bearing No.C.R.no.43 of 1992 The petitioner was arrested on 21.1.1992 alongwith three police officers on the basis of the complaint of Rukhsana Aslam. According to the Petitioner, Rukhsana Aslam was a drug trafficker and known criminal and history sheeter and the complaint was

completely false and concocted, and finally the petitioner was clearly acquitted on 13.8.1999. It appears that

pursuant to the arrest, the petitioner was suspended from the service on 21.1.1992. While under suspension he was reduced in rank on 5.11.1992 by two steps to the post of Sub Inspector of Police from the post of Inspector of Police and the reduction in the rank to the post of Police Sub Inspector was without asking him any explanation or issuing show cause notice and without holding departmental inquiry against the petitioner. By order dated 30.6.1996 the Petitioner was reinstated in the service as Police Sub-Inspector, but the criminal case was finally heard and disposed of only on 14th July,1999. After the acquittal of the petitioner, the respondent no.3 ordered that reinstatement of the petitioner in service be regularised and it was ordered that suspension period of the petitioner from 21.1.1992 to 29.6.1996 should be treated as "on duty" for all purposes as provided by Maharashtra Civil Services Rules. The petitioner made several representations requesting the Respondents to restore him to his "due post" of Inspector of Police and to pay his salary, but no heed was paid to his representations and therefore the Petitioner was constrained to approach Maharashtra Administrative Tribunal for necessary reliefs.

The tribunal, as stated earlier, dismissed the petition solely on the ground of limitation.

5. Mr.Kulkarni, learned Advocate for the Petitioner urged that the tribunal has committed an error in dismissing the petitioner’s legitimate claim on the technical ground of limitation. Learned Advocate submitted that the tribunal has completely ignored the settled principle laid down by Supreme Court that when substantial justice and technical considerations are pitted against each other, substantial justice deserves to be rendered for the other side cannot claim to have a vested right in injustice being done because of non-deliberate delay. In this connection learned Advocate has drawn our attention to the decision of the Supreme Court in the case Collector, Land Acquisition, Anantnag and another Vs. Mst.Katiji and other; AIR 1987 Supreme Court 1353 wherein Court has held that the legislature has conferred the power of condoning delay by enacting Section 5 of the Indian Limitation Act in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner

which subserves the ends of justice that being the life purpose for existence of the institution of courts. The court laid down following principles in the context of

Section 5 of Limitation Act:-

> "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
>
> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
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> 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay" The doctrine must be

applied in a rational common sense pragmatic manner.

4. When the substantial justice and technical consideration are pitted

against each other, substantial justice deserves to be rendered for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is

expected to do so."

6. In the light of the principles laid down by the Supreme Court, if we examine the facts of the present case, it would be seen that the delay was not deliberate. The Petitioner was put under suspension during the relevant

time and the suspension was revoked only on 30.6.1996. The criminal case, however, was pending and therefore, the Petitioner could not take any steps and ultimately, the petitioner was given clear acquittal by the Criminal Court only on 14.7.1999. The petitioner has stated that he legitimately expected that the he may after acquittal be reinstated to the post of Inspector of police, but no action was taken in that regard. The Petitioner made various representations dated 22.12.2000, 26.7.2001, 10.2.2003 and 10.4.2003. However, the representations failed to invoke any response from the State. In our opinion, in the circumstances of the case the delay in filling the O.A. deserves to be condoned. We accordingly, quash and set aside the order of the tribunal and allow the application of the petitioner for condonation of delay. The matter is remanded back to the tribunal for deciding the O.A. on merits. Rule is made absolute accordingly. The tribunal is directed to decide the O.A. expeditiously and preferably within the period

of Three months from today.

. Certified copy expedited.

(A.P.Shah, J.)

20.9.2004. (S.U.Kamdar, J.)